

§ 502.12

46 CFR Ch. IV (10–1–10 Edition)

decisional process of any such proceeding, an ex parte communication relevant to the merits of the proceeding;

(b) No Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any agency proceeding, shall make or knowingly cause to be made to any interested persons outside the Commission or to any party to the proceeding or its agent or to any direct participant in a proceeding, an ex parte communication relevant to the merits of the proceeding. This prohibition shall not be construed to prevent any action authorized by paragraphs (e), (f) and (g) of this section;

(c) “Ex parte communication” means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or communications regarding purely procedural matters or matters which the Commission or member thereof, administrative law judge, or Commission employee is authorized by law or these rules to dispose of on an ex parte basis;

(d) Any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any proceeding who receives, or who makes or knowingly causes to be made, an ex parte communication shall promptly transmit to the Secretary of the Commission:

- (1) All such written communications;
- (2) Memoranda stating the substance of all such oral communications; and
- (3) All written responses and memoranda stating the substance of all oral responses to the materials described in paragraphs (d)(1) and (d)(2) of this section;

(e) The Secretary shall place the materials described in paragraph (d) of this section in the correspondence part of the public docket of the proceeding and may take such other action as may be appropriate under the circumstances;

(f) Upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party to a proceeding, the Commission or the

presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the making of such communication;

(g) An ex parte communication shall not constitute a part of the record for decision. The Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, consider a violation of paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly caused such violation to occur and may take such other action as may be appropriate under the circumstances. [Rule 11.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 64 FR 7807, Feb. 17, 1999; 64 FR 23551, May 3, 1999; 64 FR 33762, June 24, 1999]

§ 502.12 Applicability of Federal Rules of Civil Procedure.

In proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice. [Rule 12.]

[58 FR 27210, May 7, 1993, as amended at 64 FR 7807, Feb. 17, 1999]

Subpart B—Appearance and Practice Before the Commission

§ 502.21 Appearance.

(a) *Parties.* A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the rules in this part. Any party or his or her representative may testify, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted.

(b) *Persons not parties.* One who appears in person before the Commission or a representative thereof, either by